

HB 1403 -- Retainage in Building Contracts

Sponsor or Co-Sponsors: Green (73), St. Onge

Same as or similar to: HB 662 Year: 2001

Emergency Clause: or Effective Date of:

Use Summary For: Version:, Year:,

Verbatim:

Modify above as follows:

New summary as follows:

This bill creates several requirements and restrictions involving "retainage," the practice of withholding a percentage of the payment for a construction project, pending satisfactory completion of the project. The bill limits retainage to 5% of the contract. The contractor may give the owner a substitute security and demand payment of the retainage. Subcontractors may do the same with contractors. The bill sets forth the types of securities that will satisfy the requirement, including certificates of deposit, retainage bonds, and unconditional letters of credit. Contractors are entitled to any income earned from the securities while deposited with the owner. Contractors may not withhold extra retainage from a subcontractor, unless the subcontractor's performance is not in accordance with the terms of the subcontract. Contractors must pass along to any subcontractors the retainage they are paid on a pro rata basis. Subcontractors may be released prior to completion of the entire project, and contractors may request an adjustment in retainage

necessary to pay these subcontractors in full. Within 30 days of the substantial completion of the project, all retainage or substitute security must be released by the owner to the contractor, less 150% of the costs to complete any remaining items. Upon receipt of this retainage, contractors must release subcontractors' share of the retainage within 7 days.

Construction contracts will be unenforceable to the extent that they are inconsistent with the requirements of the bill. Courts may award 18% interest on improperly withheld retainage and may award attorney's fees in actions to enforce the bill. Contracts for the construction of residential buildings with 4 or fewer units are exempt from the bill.